IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 706 of 1981

HONOURABLE MR.JUSTICE KS JHAVERI

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BABUBHAI VIRMAL PATEL & 1 - Appellant(s)
Versus
ARVINDBHAI JEMS NAKWAN - Defendant(s)

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Appearance :
MR KF DALAL for Appellant(s) : 1 - 2.
MR UM SHASTRI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 5th March 1981 passed by the learned Motor Accident Claims Tribunal (No.3), Ahmedabad, in MACT Application No.139 of 1979 whereby the Tribunal has awarded a sum of Rs.36,110/-.

2. The claimant has filed the aforesaid claim petition stating that while he was traveling on his Luna on 5th May 1979 from Harman Park Society to Khokhra, Matador bearing No.GTH 7514 dashed the Luna as a result of which he suffered injuries. In view of this he has filed the aforesaid claim petition which was partly allowed.

3. Learned Advocate for the Appellant has submitted that the Tribunal has not considered the fact there

was contributory negligence and the Tribunal could not have travelled beyond a sum of Rs.45000/-. He further submitted that the Tribunal has committed an error in not considering the reduced claim of Rs.45000/- and has wrongly taken 50% of the original claim.

4. Learned Advocate for the respondent has submitted that the Tribunal has considered all the aspects of the matter and no interference is required in this appeal.

5. In the present case the total awarded amount is only Rs.36100/- and therefore there is no question of awarding the amount of more than Rs.45000/-. Though the argument that the Tribunal should have seen only Rs.45000/- is attractive, what the court has to see is whether the claimant has been awarded any amount more than Rs.45000/- which is not in the present case. I do not find any substance that the contributory negligence should have been calculated on the basis of the amount of Rs.45000/-.

6. In view of the above I do not find any substance in this appeal. This appeal is, therefore, dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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